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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8456 OF 2007

Smt. Molly Cherian ...Petitioner
V/s.
M/s. Indian Aluminium Co. Ltd. ...Respondents

Mr. Ravindra Nair for the Petitioner

CORAM : B.H.MARLAPALLE,J.
DATED : 3rd December, 2007

P.C.

. Heard Mr. Nair, the Learned Counsel for the Petitioner who is aggrieved by the Award passed by the Labour Court dismissing her demand of reinstatement in Ref(IDA) NO. 84/2004.

2. The Petitioner was working as a Senior Telephone operator/typist. She was issued a chargesheet alleging misconduct of habitual absence from duty on account of ill health. The domestic enquiry was conducted in which she appeared and submitted the documents. The enquiry officer held that in the year 1993, the period of absence on the ground of sickness was 20 days. In the year 1994 it was 51 days and in the year 1995 it was 156 days. Even the concerned Neurologist who has examined the Petitioner has certified that she was suffering from idiopathic severe epilepsy. A copy of these findings

was supplied to the Petitioner and ultimately by an order dated 27-1-1996 she was discharged from service.

3. The evidence brought before the Labour Court by both the parties and more particularly the documentary evidence, the Labour Court noted that on receiving the discharge order the Petitioner had approached the employer and received all legal dues including an amount of Rs. 5,00,000/- towards gratuity and provident fund. It also appears that as per Exhibit U-21 for the first time she submitted a representation to the Assistant Labour Commissioner on 3-1-2003 raising the grievance of illegal termination of service and this was exactly after 7 years from the date of discharge. The Labour Court also noted from the record the Petitioner's date of birth was 28-1-1940 and on reaching the age of 58 years she would have retired on 27-1-1998 as per the Certified Standing Orders. The representation was made to the Assistant Labour Commissioner almost after 5 years from the date of superannuation in normal course. Thus it was a stale demand of reinstatement in service on the alleged ground that she was illegally discharged from the service.

4. The Labour Court even otherwise held that the enquiry conducted against the Petitioner was fair and

proper and findings of the enquiry officer did not suffer from any perversity. The Labour Court on the point of discharge held in favour of the Petitioner but infact the reasoning given therein does not impress specially when in normal course the Petitioner would have retired on 27-1-1998. The claim for reinstatement made vide exhibit 21 was definitely stale.

5. I am, therefore, satisfied that on all counts her case for reinstatement on the ground that the order of discharge was illegally issued was unjust, must fail and infact the competent authority while taking the representation was required to consider all these issues. The Labour Court also held that on the day the employer had raised the dispute i.e. 3-1-2003, she was not entitled to do so as she would have retired on superannuation on 27-1-1998 itself.

6. The view taken by the Labour Court is neither perverse nor suffers from any error apparent on the face of record. Therefore, there is no case made out to call for interference in the same under Article 227 of the Constitution.

7. Petition is rejected summarily.

[B.H.MARLAPALLE,J.]